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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/716,970

11/18/2003

Patrice Martinez

41052/294321

8909

23370 7590 04/17/2007  
JOHN S. PRATT, ESQ  
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EXAMINER

PATEL, NIHIR B

ART UNIT

PAPER NUMBER

3772

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
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3 MONTHS

04/17/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

ED

<b>Office Action Summary</b>	Application No.		Applicant(s)	
	10/716,970		MARTINEZ ET AL.	
	Examiner		Art Unit	
	Nihir Patel		3772	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 1.19.2007.
- 2a) ☒ This action is **FINAL**.      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 10 is/are allowed.
- 6) ☒ Claim(s) 1-3 and 5 is/are rejected.
- 7) ☒ Claim(s) 4-6 and 9 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## DETAILED ACTION

### *Response to Arguments*

1. In response to applicant's arguments in reference to claim 1, the recitation **“for an emergency breathing mask for the flight crew of an airplane”** has not been given patentable weight because the recitation occurs in the preamble. A preamble is generally not accorded any patentable weight where it merely recites the purpose of a process or the intended use of a structure, and where the body of the claim does not depend on the preamble for completeness but, instead, the process steps or structural limitations are able to stand alone. See *In re Hirao*, 535 F.2d 67, 190 USPQ 15 (CCPA 1976) and *Kropa v. Robie*, 187 F.2d 150, 152, 88 USPQ 478, 481 (CCPA 1951).
2. In reference to claim 3, the applicant argues that Pfiefer does not disclose two doors having a diagonal notch that symmetrical about the bisector of the angle between the two hinge axis with corresponding notch in the edge of the other door. The examiner disagrees. When referring to figure 1 of the Pfiefer's reference, the lids 10 and 11 have a diagonal notch that is symmetrical about the bisector of the angle between the two hinge axis with corresponding notch in the edge of the other door.
3. In reference to the amended claim 1, the claim limitation is being treated under 35 U.S.C. 112, sixth paragraph.

### *Claim Rejections - 35 USC § 102*

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

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(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

5. Claims **1-3** are rejected under 35 U.S.C. 102(e) as being anticipated by Pfiefer et al. (US 6,626,317).

6. As to **claim 1**, Pfiefer teaches an apparatus that comprises means for receiving the mask, such means comprising frame **2** (see **figure 1 column 3 lines 45-50**) forming a receptacle for the mask, the frame having an open face through which the mask is inserted and extracted; and at least two doors **10 and 11** (see **figure 1 and column 3 lines 50-55**) closing the open face of the frame, at least in part, the two doors being hinged about two hinge axes situated respectively on two adjacent edges of the open face and substantially perpendicular to each other (see **figure 1 and column 2 lines 60-67 and column 3 lines 55-65**).

7. As to **claim 2**, Pfiefer teaches an apparatus having two doors **10 and 11** each substantially in the form of a triangular plate (see **figure 1**), with a vertex having two sides forming a right angle, one of these sides being hinged about one of the two hinge axes (see **figure 1**).

8. As to **claim 3**, Pfiefer teaches an apparatus wherein each of the doors **10 and 11** has a diagonal edge interconnecting the two sides of the vertex forming a right angle, the diagonal edge including a notch that is symmetrical about the bisector of the angle between the two hinge axes with the corresponding notch in the edge of the other door (see **figure 1**).

***Claim Rejections - 35 USC § 103***

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

11. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Pfiefer et al. (US 6,626,317).

12. As to claim 5, Pfiefer substantially discloses the claimed invention, see rejection of claim 1 above, but does not disclose an open face that is substantially square in shape. It would have been an obvious matter of design choice to modify Pfiefer's invention by providing an open face that is substantially square in shape, since the applicant has not disclosed that having an open face that is substantially square in shape solves any stated problem or is for any particular purpose and it appears that the invention would perform equally well with a circular open face as disclosed in Pfiefer.

#### *Allowable Subject Matter*

13. Claim 10 is allowed. The prior art does not disclose the open face being provided with two doors movable a closed position in which they close the open face while leaving a fraction of the regulator projecting, and an outwardly open position enabling the mask to pass through,

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the doors pivoting on respective edges of the open face about respective axes occupying two adjacent sides of the open face.

14. Claims **4 and 6-9** are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. The prior art does not disclose the notch in which door is situated at the opposite end of the diagonal edge from the point of intersection between the hinge axes.

### *Conclusion*

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nihir Patel whose telephone number is (571) 272-4803. The examiner can normally be reached on 7:30 to 4:30 every other Fridays off.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patricia Bianco can be reached on (571) 272-4940. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Art Unit 3772



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4-15-07